

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hickok, *et al.*
Assignee: CYTYC Corporation Confirmation No. 8562
Filing Date: February 6, 2004 Examiner: Grun, James Leslie
Serial No.: 10/774,144 Group Art Unit: 1641
Title: Screening and Treatment Methods for Prevention of Preterm Delivery

MAIL STOP APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 29, 2009

SECOND AMENDED APPEAL BRIEF

Sir:

This Second Amended Appeal Brief is filed in response to the Notification of Non-Compliant Appeal Brief mailed June 10, 2009 and pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed December 12, 2008. In the Notice of Non-Compliance, the Examiner argues that the Summary of the Claimed Subject Matter does not refer to the specification as filed by page and line number. The Summary of the Claimed Subject Matter section has been amended to recite the specification as filed by page and line number. The Examiner also argues that the brief does not contain items required under 37 CFR 41.37(c). In particular, the Examiner states that the addition of the "Grouping of Claims" and the "Conclusion" sections are improper. The Appellant disagrees. 37 CFR 41.37(c) only requires, at a minimum, certain items

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under appropriate headings and in a certain order. There is nothing under 37 CFR 41.37(c) which forbids the inclusion of sections which help to further clarify the Appellant's arguments. The Appellant respectfully requests that the Examiner's objection to the addition of the "Grouping of Claims" and the "Conclusion" sections be rescinded.

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The Appellant requests that the Summary of the Claimed Subject Matter section be amended as follows:

Summary of the Claimed Subject Matter.

The Appellant's pending claims of the present invention are directed to a method for screening and treating a subject, comprising: a) obtaining a sample from a subject who is asymptomatic for preterm or imminent delivery; b) detecting a fetal restricted antigen in said sample from said subject and assessing whether the level of fetal restricted antigen is indicative of a risk of preterm or imminent delivery; and c) if the level of fetal restricted antigen is indicative of the risk, administering a progestational agent to the subject, whereby delivery is delayed.

A summary of the claimed subject matter defined in independent claim 67 involved in the Appeal may be found on page 19, line 18 to page 20, line 13 and on page 28, line 2 to page 31, line 22 of the specification as well as Examples 9, 10, and 11 on pages 51 to 59.

CONCLUSION

It is not believed that any additional extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore is hereby authorized to be charged to Deposit Account No. 502855 referencing attorney docket number 18.006011.

Customer No. 38732

Respectfully submitted,



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